IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated: Nainital the 06th day of June 2005
Criminal Misc. Bail Application No. 583/2004
Order on the bail application of accused

CRIMINAL SIDE

Susheel Sharma S/o Sri Kishori Lal Sharma
R/o Durga Colony
P.S. Kashipur
District Udham Singh Nagar .....Applicant

Versus

State of Uttaranchal .....Opposite Party

Arising out of case crime No. 376/2004
U/s 302 I.P.C. & 25 Arms Act
P.S. Kashipur
District – Udham Singh Nagar.

Hon'ble J.C.S. Rawat, J.

Heard Sri Dharam Veer learned counsel for the applicant and learned A.G.A. for the State.

Perused the record. The applicant-accused has not been named in the FIR. The incriminating circumstance against the applicant is the last scene evidence and later on the statement of one witness-Om Prakash, who claimed to be the eye-witness of the incident, was recorded after a lapse of four days. It has been alleged that the applicant made the extra-judicial confession before the complainant-Om Prakash. Witness-Om Prakash, who claimed to be eye-witness of the incident, has been declared hostile. To prove the factum of the last scene evidence, the prosecution has produced the witnesses namely, Durga Prasad (PW1), Hirdesh Kumar (PW2) & Om Pal (PW3). But, the said witnesses have been declared hostile by the prosecution. The only witness Wahid Hussain has stated about the fact. I am not entering into the merit of the said statement at this stage. It was contended that the evidence of extra-judicial confession is not reliable because it has been stated after four days of the incident and there was no occasion to the applicant to give his statement before the complainant. Considering the facts and totality of the circumstances of the case, it is fit case for bail.

Let the applicant-accused be released on bail on executing a personal bond and two sureties each in the like amount to the satisfaction of the C.J.M. concerned.

However, the observations made above will not prejudice the trial court during the trial.

(J.C.S. Rawat, J.)

Dated 06.06.2005

LSR